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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

December 9, 2009

John W. Reitz, D.D.S., Chair
State Board of Dentistry
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-4616 (IRRC #2795)
State Board of Dentistry
EFDA Program Approval

Dear Mr. Reitz:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure
cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Michael P. McGeehan, Majority Chairman, House Professional Licensure Committee
Honorable William F. Adolph, Jr., Minority Chairman, House Professional Licensure Committee
Honorable Pedro A. Cortes, Secretary, Department of State
Robert A. Mulle, Esq., Office of Attorney General
Andrew Clark, Esq., Office of General Counsel

Comments of the Independent Regulatory Review Commission

State Board of Dentistry Regulation #16A-4616 (IRRC #2795)

EFDA Program Approval

December 9, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the October 10, 2009 *Pennsylvania Bulletin.* Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Dentistry (Board) to respond to all comments received from us or any other source.

1. Protection of the public health, safety and welfare.

The House Professional Licensure Committee has questioned whether Expanded Function Dental Assistant (EFDA) programs that have been approved by the Board should be subject to a renewal process. We believe that a renewal process would be a reasonable requirement that would ensure these programs continue to provide the education and training needed for EFDAs. This would help ensure that the public health and safety is adequately protected. We recommend that the final-form regulation address renewal of program approval.

We also question the $80 fee in Section 33.3(a) of the proposed regulation titled "EFDA program approval application fee." The $80 fee is supported by the "Fee Report Form" included with the submittal of the proposed regulation. That form shows an estimate of a total of two hours to review an EFDA program approval application (consisting of 0.5 hour of Board administrator time and 1.5 hours to "review and present to the full board for approval"). Proposed Section 33.117 *EFDA program approval* sets forth several dozen requirements that must be evaluated, including planning and assessment, institutional accreditation, program director, faculty, facilities, curriculum and demonstration of competency. The Board should explain how a two-hour review of an application that can result in approval of a program will adequately protect the public health safety and welfare.

2. Section 33.102. Professional education. – Implementation procedures; Reasonableness; Clarity.

Subsection (c)(1)(i) includes the phrase "Board-approved EFDA program" and Subsection (c)(1)(iii) includes the phrase "Board-approved certification program." We have two concerns. First, the main goal of this rulemaking is to establish guidelines for the approval of EFDA programs, and that is accomplished through the addition of new Section 33.117, pertaining to EFDA program approval. What process is used to approve the certification programs referenced in Subsection (c)(1)(iii)? We recommend that the process be included in the final-form regulation. In the alternative, and as suggested by a commentator, has the Board considered accepting accredited certification programs instead of requiring Board approval of these programs?

Second, how would a person know if an "EFDA program" or a "certification program" has been approved by the Board? Has the Board considered listing the approved programs on its website? We recommend that the final-form regulation include a section that states a list of approved programs can be obtained from the Board's website. We note that Section 33.117(d) makes reference to an "approved list," but does not indicate where the list can be obtained.

3. Section 33.117. EFDA program approval. – Clarity.

Subsection (b)(9) requires "other information requested by the Board." This requirement is overly broad. We recommend adding the phrase "related to the EFDA program" or similar language to limit the scope of information required to get a program approved.

Subsection (c)(3)(viii) requires program directors to maintain "records related to the EFDA program, including instructional objectives and course outcomes." This provision is vague for two reasons. First, it does not list all of the records that must be kept. Second, it does not state how long the records must be kept. To improve clarity, we recommend that the final-form regulation specify what records must be kept and for how long.

Subsection (c)(4)(iv) states "Completed, or is in the process of completing, a course in education methodology...." The phrase "in the process of completing" is vague because almost any program could claim it is in the process of completing the requirement but, as written, would not have to complete the requirement. We recommend including a reasonable time limit to implement the course in education methodology.

Under Subsection (c)(5)(i), EFDA programs must provide "adequate physical facilities and equipment." The term "adequate" is vague. How will an EFDA

program know if its facilities and equipment are adequate? We recommend that more detail be included in the final-form regulation.

Subsection (c)(7)(ii)(B) ends with the phrase "in all restorative materials." It appears that the word "all" would encompass a multitude of restorative materials. The regulation would be clearer by describing categories of restorative materials or by providing examples. Is it the Board's intent to include "all" restorative materials?

Subsection (c)(7)(iv)(C) states EFDA program directors are required to provide "documentation" of the student's competency attainment to the Board as part of the student's application for certification. The final-form regulation should specify what type of documentation will be required.

Facsimile Cover Sheet

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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

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Cynthia Montgomery
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Licensing Boards and Commissions
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3-3394 (Cynthia Montgomery)
Fax: 7-0251 (772-1892)
Date: December 9, 2009
Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Board of Dentistry's regulation #16A-4616 (IRRC #2795). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Thomas Blackburn **Date:** 12/9/09

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